

that eventually became law. Many pieces of progressive legislation, beginning at the time of my tenure as majority leader the first time, carried TED KENNEDY's imprint.

He is a Senator who does his homework; he knows his subject. When he calls up an amendment, when he manages a bill, when he is the ranking member on a bill that has been called up, TED KENNEDY knows what he is talking about. We may not always agree with him, but we listen because we know he has mastered that subject matter.

Although blessed with wealth, he has always been a powerful and eloquent voice for the poor and oppressed, not just in the United States but also around the world. And he has also been a powerful and eloquent voice for the Democratic Party, its traditions, its causes.

We will long remember his soaring voice, his speeches to Democratic conventions, as well as his passionate struggle for the rights of the working people, for health care reform, for the strengthening of the Social Security net for America's less fortunate.

In the Senate, he has shown that public service is the place where, to paraphrase his late brother, John F. Kennedy, Americans can stop asking what their country can do for them but what they can do for their country.

Though we were out of session on TED KENNEDY's birthday, I say belatedly that I will always remember the support that Senator KENNEDY gave me during the years it was my privilege to serve as the Senate Democratic leader. When times got tough, as they occasionally do for a Senate leader, I knew I could always count on Senator KENNEDY's assistance. It may have been needed for an additional vote; it may have been for his assistance in building approval for a legislative proposal, but whatever was needed, Senator KENNEDY was there, and I was thankful.

Senator KENNEDY is a true friend, not only to me but also to the people of West Virginia, and when I make this personal reference the following two happenings will illustrate what I mean.

When I reached my 80th birthday—the Psalmist doesn't promise 80 years; the Psalmist promises only 70, but goes on to say:

And if by reason of strength they be fourscore years, yet is their strength labour and sorrow; for it is soon cut off, and we fly away.

On my 80th birthday, I was in Charleston, WV, and the then-Governor of the State, Gov. Cecil Underwood, had invited me over to the Governor's mansion. I was enjoying a luncheon there, given by Cecil Underwood in my honor. During the luncheon, I was called to the telephone. On the telephone was my chief of staff, Barbara Videnieks, who said to me, "Senator, we have a visitor in the office," mean-

ing here in Washington. She said, "Senator TED KENNEDY is here, and he has with him 80 roses."

TED KENNEDY brought the roses to my office himself, 80 roses. I never had that to happen to me before, and I am not sure that many Senators in this Chamber, if any other than I, can recount such a beautiful experience as that was for me. There was TED KENNEDY in my office—I was in Charleston, at the Governor's mansion—with 80 roses on my 80th birthday. You can bet before he was able to get out of my office and down to the subway car I was on the telephone calling him and thanking him for being such a real friend.

You would think we vote together just like that all the time. We don't. But we never argue about it; we never have any falling out about it, when we have little differences of viewpoints with respect to legislation. There is this underlying bond of friendship between Senator KENNEDY and me.

Last year, I was at the Greenbriar with my wife of 63 years on our anniversary. And, lo and behold, here came to our room at the Greenbriar 63 red roses. From whom? TED KENNEDY. I was surprised. That is TED KENNEDY. Our friendship will always be strong. He thought of me on our wedding anniversary, and he thought of Erma. He is just like that. But who else sent me 63 roses on our wedding anniversary? Nobody.

I think it is remarkable that there has grown up that kind of bond of affection and friendship between these two Senators.

Most people probably remember President John F. Kennedy introducing himself to the people of France by saying he was the person who accompanied Jacqueline Kennedy to Paris. A year before that, President Kennedy, upon a return visit to the Appalachian coal fields in West Virginia, introduced himself saying—here is President Kennedy saying—"I will introduce myself—Teddy Kennedy's brother."

During the last election, I saw for myself a tremendous display of this continued affection for Senator KENNEDY among my people, the people of West Virginia. When Senator KENNEDY and I appeared at a political rally in the heart of the State's southern coal fields where I grew up, we were promptly swamped by swarms of people—swarms of West Virginians, mountain people—seeking TED KENNEDY's autograph and wanting to shake hands with him or simply to see him.

I will always be pleased to introduce myself as Senator TED KENNEDY's friend, and I will always be glad that I have had the opportunity to serve with him in the Senate.

I say belatedly to TED KENNEDY, with his birthday of a few days ago, Senator KENNEDY, because of you, many people in this country are much better off. Be-

cause of you, millions of our citizens have a voice that is heard in these Halls. So happy birthday, Senator KENNEDY, and may God bless you.

Mr. President, I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

SENATOR DAYTON'S MAIDEN SPEECH

Mr. WELLSTONE. Mr. President, I was at a conference dealing with health care policy when my colleague, Senator DAYTON, spoke. I come to the floor to congratulate Senator DAYTON for his words.

When he campaigned for the U.S. Senate seat, he spoke on cost of prescription drugs, especially for the elderly. I think it applies to many other families as well. Over and over again, he said this was his No. 1 priority. He said our country could do better. He said this was a matter of elementary justice. He talked about older people in Minnesota—senior citizens—two-thirds of whom have no prescription drug coverage. He talked about, for example, seniors cutting pills in half because they could not afford them or people running out of food or their homes being cold.

I think it is very significant that when Senator DAYTON came to the floor of the Senate today to give his first speech, his maiden speech, he talked about prescription drug costs and his commitment to introducing responsible legislation that will make a real difference in the lives of people.

The reason I think it is significant is not only because he spoke on an issue that is very important to people's lives, but it is all the more important because he said something about MARK DAYTON in very personal terms. He campaigned on this issue. He listened to many people in Minnesota, and many elderly people talk about these costs.

He came to the Senate after winning the election, and he basically stayed true to the commitment he made to people in his State. Senator DAYTON has been my friend for many years. I think he will be a great Senator.

I always said—and I said to Senator Rod Grams after the election—that no one can ever say to Senator Rod Grams that he did not vote for what he believed in; that he did not say what he believed. I think he deserves an awful lot of credit for that.

I never like it when anyone loses. I don't like to see people lose. I like to see people win. It is because of my Jewish roots.

I think MARK DAYTON is going to be a great Senator for the State of Minnesota and for this country, and I am very honored to serve in the Senate with him. As the senior Senator, I hope he will consider my views over and over again. I doubt that he will. And it will probably make him an even better Senator if he doesn't.

He spoke powerful words. I am sorry I was not on the floor with him. But I thank him for his commitment to the people. I thank him for his passion. I thank him for caring about public service, and I thank Senator DAYTON for caring about senior citizens and other citizens in the country. I thank him for his commitment to Minnesota.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mr. LEAHY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. We are in a period of morning business, with Members allowed to speak for up to 10 minutes.

U.S. SUPREME COURT

Mr. LEAHY. Mr. President, I have become increasingly concerned about some of the recent actions of the U.S. Supreme Court. As a member of the bar of the Court, as a U.S. Senator, as an American, I, of course, respect the decisions of the Supreme Court as being the ultimate decisions of law for our country. As an American, I accept any of its decisions as the ultimate interpretation of our Constitution, whether I agree or disagree. I have probably supported the Supreme Court and our judicial system more than anybody else on this floor.

Having said that, I think we can at least still have in this country a discussion of some of the things the Court has done. Recently, we have seen another assault by the Court on the legislative powers of Congress.

My concern may be more in sadness than in anger over what has happened. It is very easy to give talks about activist Supreme Courts, but it is hard to think of a time, certainly in my lifetime, with a more activist Supreme Court than the current one. Last week, the Court held that State employees are not protected by the Federal law banning discrimination against the disabled. The case was decided by the same 5-4 majority that brought us *Bush v. Gore* and other examples of judicial activism, the so-called "conservative" wing of the Rehnquist Court.

I accept they are indeed "conservative" in the sense that they greatly

restrict the role of the Federal Government in protecting the individual rights and liberties of ordinary Americans. They are very conservative in the sense they have decided that the unelected five-member majority can go against the overwhelming bipartisan position of the elected Members of the House and the Senate, Republican and Democrat.

The case I speak of involved two Alabama State employees. Patricia Garrett sued the University of Alabama for demoting her when she returned to work after undergoing treatment for breast cancer. Milton Ash sued the State Department of Youth Services for refusing to modify his duties and work environment to accommodate his medical problems, which included chronic asthma.

These are precisely the sorts of grievances Congress set out to remedy when it passed a landmark civil rights law called the Americans with Disabilities Act, commonly known as the ADA. I was proud to be part of the overwhelming bipartisan consensus that passed the ADA—proud because of the principles the ADA stands for. It stands for the principle that America does not tolerate discrimination against those in our society who suffer misfortune and illness. It stands for the principle that every disabled person in America is entitled to be treated fairly in the workplace. And it stands for the principle that all employers, whether government or private employers, should be held accountable in a court of law when they violate the rights of the disabled.

Nondiscrimination, fairness in employment, and government accountability are each important core values in our society. They are principles that the American people know well and hold dear. They are the values that the first President Bush upheld when he signed the ADA into law. I remember it very well, that day at the White House when he signed the law. He reminded the Supreme Court of these principles when he took the unusual step of writing an eloquent brief to the Supreme Court in support of the ADA and in support of Patricia Garrett and Milton Ash's right to their day in court. I applauded him for that.

Sadly, last week the activist wing of the Supreme Court paid little heed to the view of either democratic branch of our government—the Congress that enacted the ADA or former President Bush who signed it into law. These five activist Justices gave short shrift to the core values of the American people that the ADA embodies.

Instead of protecting the disabled from discrimination, they denied the disabled their day in court. Instead of requiring fair treatment for all American workers, they created a special exception limiting the rights of government workers. Instead of promoting

government accountability, they championed, above all else, the obscure doctrine of State sovereign immunity. That is legalese for saying the government gets a special exemption, preventing it from being held accountable in a court of law.

We hear a lot of rhetoric, complaining about so-called "activist" judges. I have heard it used by my friends on the other side of the aisle to describe Democratic judicial appointees who say they will uphold settled law, such as *Roe v. Wade*, or those who have been associated with public interest organizations that have fought to defend individual civil liberties. It is sometimes applied even to conservative Republican appointees such as Justices O'Connor and Kennedy, when it is felt that they are not being conservative enough.

When he served on the Judiciary Committee in the Senate, our new Attorney General gave a speech on what he called "judicial despotism." He complained about "the alarming increase in activism" on the Supreme Court. He referred to the majority of the Court, including Justice Kennedy, as "ruffians in robes."

I do not use such language. That kind of name calling does no good for the mutually respectful relationship among the three branches of government, the relationship that our Constitution and the American people call for. I have refrained from using such language, even when I strongly disagree with a decision, such as the 5-4 decision in *Bush v. Gore*, when the Supreme Court, in effect, decided a Presidential election.

But I mention the question of activism because the American people should know that activism does not come in just one flavor. Some would say judicial activism and liberal activism are one and the same. Of course they are not. Judicial activism can work both ways. It can work to expand protections for all our rights or it can be used to limit our rights.

As one of the Nation's leading constitutional scholars, Professor Cass Sunstein, pointed out in an article last month, history teaches that for most of the 20th century, judicial activism was predominantly conservative, and the unelected judicial branch was far to the right of the democratic branches of our Government.

Actually, that is where we are today at the start of the 21st century. The reality today in courts such as the U.S. Supreme Court and Fourth Circuit that are dominated by ideologically conservative Republican appointees is that the dominant flavor of judicial activism is right wing. In fact, I do not think we have seen such right-wing activism in the courts since the ultra conservative Supreme Court of the 1920s and the 1930s.

There is also, as some commentators have pointed out, an almost arrogant